

**AMENDMENTS TO HEALTH INSURANCE
COVERAGE IN STATE CONTRACTS**

2010 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill amends provisions related to the requirement that contractors with certain state entities must provide qualified health insurance to their employees and the dependents of the employees who work or reside in the state.

Highlighted Provisions:

This bill:

- ▶ clarifies the application of a waiting period for health insurance may not exceed the first of the month following 90 days of the date of hire;
- ▶ clarifies that the qualified health insurance coverage must be offered to employees and dependents who work or reside in the state;
- ▶ clarifies that the qualified health insurance coverage that must be offered is a minimum standard and an employer may offer greater coverage;
- ▶ amends the definition of qualified health insurance coverage to clarify the standards;
- ▶ amends the enforcement provisions to provide protections for good faith compliance; and
- ▶ clarifies how an employer offering a defined contribution arrangement may comply with state contract requirements.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17B-2a-818.5, as enacted by Laws of Utah 2009, Chapter 13

19-1-206, as enacted by Laws of Utah 2009, Chapter 13

32 **63A-5-205**, as last amended by Laws of Utah 2009, Chapter 13

33 **63C-9-403**, as enacted by Laws of Utah 2009, Chapter 13

34 **72-6-107.5**, as enacted by Laws of Utah 2009, Chapter 13

35 **79-2-404**, as enacted by Laws of Utah 2009, Chapter 13

36 ENACTS:

37 **31A-30-209**, Utah Code Annotated 1953

38

39 *Be it enacted by the Legislature of the state of Utah:*

40 Section 1. Section **17B-2a-818.5** is amended to read:

41 **17B-2a-818.5. Contracting powers of public transit districts -- Health insurance**
42 **coverage.**

43 (1) For purposes of this section:

44 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
45 34A-2-104 who:

46 (i) works at least 30 hours per calendar week; and

47 (ii) meets employer eligibility waiting requirements for health care insurance which
48 may not exceed the first day of the calendar month following 90 days from the date of hire.

49 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

50 (c) "Qualified health insurance coverage" means [~~a health benefit plan that~~] at the time
51 the contract is entered into or renewed:

52 ~~[(i) (A) provides coverage that is actuarially equivalent to the current benefit plan~~
53 ~~determined by the Children's Health Insurance Program under Section 26-40-106; and]~~

54 ~~[(B) under which the employer pays at least 50% of the premium for the employee and~~
55 ~~the dependents of the employee;]~~

56 ~~[(ii) (A) is a federally qualified high deductible health plan that has:]~~

57 ~~[(i) the lowest deductible permitted for a federally qualified high deductible health~~
58 ~~plan; and]~~

59 ~~[(ii) an out of pocket maximum that does not exceed three times the amount of the~~
60 ~~annual deductible; and]~~

61 ~~[(B) under which the employer pays 75% of the premium for the employee and the~~
62 ~~dependents of the employee; or]~~

63 ~~[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan~~
64 ~~determined under Subsection (1)(c)(i); and]~~

65 ~~[(B) under which the employer pays at least 75% of the premium of the employee and~~
66 ~~the dependents of the employee.]~~

67 (i) a health benefit plan and employer contribution level with a combined actuarial
68 value at least actuarially equivalent to the combined actuarial value of the Benchmark Plan
69 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
70 a contribution level of 50% of the premium for the employee and the dependents of the
71 employee who reside or work in the state, in which:

72 (A) the employer pays at least 50% of the premium for the employee and the
73 dependents of the employee who reside or work in the state; and

74 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

75 (I) rather than the Benchmark Plan's deductible, and the Benchmark Plan's out of pocket
76 maximum based on income levels:

77 (Aa) the deductible is \$750 per individual and \$2,250 per family; and

78 (Bb) the out of pocket maximum is \$3,000 per individual and \$9,000 per family;

79 (II) dental coverage is not required; and

80 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
81 apply; or

82 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
83 deductible that is either:

84 (I) the lowest deductible permitted for a federally qualified high deductible health plan;
85 or

86 (II) a deductible that is higher than the lowest deductible permitted for a federally
87 qualified high deductible health plan, but includes an employer contribution to a health savings
88 account in a dollar amount at least equal to the dollar amount difference between the lowest
89 deductible permitted for a federally qualified high deductible plan and the deductible for the
90 employer offered federally qualified high deductible plan; and

91 (B) an out of pocket maximum that does not exceed three times the amount of the
92 annual deductible; and

93 (C) under which the employer pays 75% of the premium for the employee and the

94 dependents of the employee who work or reside in the state.

95 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

96 (2) Except as provided in Subsection (3), this section applies to all contracts entered
97 into by the public transit district on or after July 1, 2009, if:

98 (a) the contract is for design or construction; and

99 (b) (i) the prime contract is in the amount of \$1,500,000 or greater; or

100 (ii) a subcontract is in the amount of \$750,000 or greater.

101 (3) This section does not apply if:

102 (a) the application of this section jeopardizes the receipt of federal funds;

103 (b) the contract is a sole source contract; or

104 (c) the contract is an emergency procurement.

105 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
106 or a modification to a contract, when the contract does not meet the initial threshold required
107 by Subsection (2).

108 (b) A person who intentionally uses change orders or contract modifications to
109 circumvent the requirements of Subsection (2) is guilty of an infraction.

110 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit
111 district that the contractor has and will maintain an offer of qualified health insurance coverage
112 for the contractor's employees and the employee's dependents during the duration of the
113 contract.

114 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
115 shall demonstrate to the public transit district that the subcontractor has and will maintain an
116 offer of qualified health insurance coverage for the subcontractor's employees and the
117 employee's dependents during the duration of the contract.

118 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
119 the duration of the contract is subject to penalties in accordance with ~~[administrative rules]~~ an
120 ordinance adopted by the public transit district under Subsection (6).

121 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
122 requirements of Subsection (5)(b).

123 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
124 the duration of the contract is subject to penalties in accordance with ~~[administrative rules]~~ an

125 ordinance adopted by the public transit district under Subsection (6).

126 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
127 requirements of Subsection (5)(a).

128 (6) The public transit district shall adopt [~~administrative rules~~] ordinances:

129 [~~(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;~~]

130 [~~(b)~~] (a) in coordination with:

131 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

132 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

133 (iii) the State Building Board in accordance with Section 63A-5-205;

134 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403; and

135 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

136 [~~(vi) the Legislature's Administrative Rules Review Committee; and~~]

137 [~~(c)~~] (b) which establish:

138 (i) the requirements and procedures a contractor must follow to demonstrate to the
139 public transit district compliance with this section which shall include:

140 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

141 (b) more than twice in any 12-month period; and

142 (B) that the actuarially equivalent determination required in Subsection (1) is met by
143 the contractor if the contractor provides the department or division with a written statement of
144 actuarial equivalency from either:

145 (I) the Utah Insurance Department; [~~or~~]

146 (II) an actuary selected by the contractor or the contractor's insurer; [~~and~~] or

147 (III) an underwriter who is responsible for developing the employer group's premium
148 rates;

149 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
150 violates the provisions of this section, which may include:

151 (A) a three-month suspension of the contractor or subcontractor from entering into
152 future contracts with the public transit district upon the first violation;

153 (B) a six-month suspension of the contractor or subcontractor from entering into future
154 contracts with the public transit district upon the second violation;

155 (C) an action for debarment of the contractor or subcontractor in accordance with

156 Section 63G-6-804 upon the third or subsequent violation; and

157 (D) monetary penalties which may not exceed 50% of the amount necessary to
158 purchase qualified health insurance coverage for employees and dependents of employees of
159 the contractor or subcontractor who were not offered qualified health insurance coverage
160 during the duration of the contract[-]; and

161 (iii) a website on which the district shall post the benchmark for the qualified health
162 insurance coverage identified in Subsection (1)(c)(i).

163 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
164 subcontractor who intentionally violates the provisions of this section shall be liable to the
165 employee for health care costs [~~not covered by insurance.~~] that would have been covered by
166 qualified health insurance coverage.

167 (ii) An employer has an affirmative defense to a cause of action under Subsection
168 (7)(a) if the employer:

169 (A) relied in good faith on a written statement of actuarial equivalency provided by an
170 actuary; or

171 (B) if a department or division determines that compliance with this section is not
172 required under the provisions of Subsections (3) or (4).

173 (b) An employee has a private right of action only against the employee's employer to
174 enforce the provisions of this Subsection (7).

175 (8) Any penalties imposed and collected under this section shall be deposited into the
176 Medicaid Restricted Account created in Section 26-18-402.

177 (9) The failure of a contractor or subcontractor to provide qualified health insurance
178 coverage as required by this section:

179 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
180 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
181 Legal and Contractual Remedies; and

182 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
183 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
184 or construction.

185 Section 2. Section **19-1-206** is amended to read:

186 **19-1-206. Contracting powers of department -- Health insurance coverage.**

187 (1) For purposes of this section:

188 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
189 34A-2-104 who:

190 (i) works at least 30 hours per calendar week; and

191 (ii) meets employer eligibility waiting requirements for health care insurance which
192 may not exceed the first day of the calendar month following 90 days from the date of hire.

193 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

194 (c) "Qualified health insurance coverage" means ~~[a health benefit plan that]~~ at the time
195 the contract is entered into or renewed:

196 ~~[(i) (A) provides coverage that is actuarially equivalent to the current benefit plan
197 determined by the Children's Health Insurance Program under Section 26-40-106; and]~~

198 ~~[(B) under which the employer pays at least 50% of the premium for the employee and
199 the dependents of the employee;]~~

200 ~~[(ii) (A) is a federally qualified high deductible health plan that has:]~~

201 ~~[(i) the lowest deductible permitted for a federally qualified high deductible health
202 plan; and]~~

203 ~~[(ii) an out of pocket maximum that does not exceed three times the amount of the
204 annual deductible; and]~~

205 ~~[(B) under which the employer pays 75% of the premium for the employee and the
206 dependents of the employee; or]~~

207 ~~[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
208 determined under Subsection (1)(c)(i); and]~~

209 ~~[(B) under which the employer pays at least 75% of the premium of the employee and
210 the dependents of the employee;]~~

211 (i) a health benefit plan and employer contribution level with a combined actuarial
212 value at least actuarially equivalent to the combined actuarial value of the Benchmark Plan
213 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
214 a contribution level of 50% of the premium for the employee and the dependents of the
215 employee who reside or work in the state, in which:

216 (A) the employer pays at least 50% of the premium for the employee and the
217 dependents of the employee who reside or work in the state; and

218 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
219 (I) rather that the Benchmark Plan's deductible, and the Benchmark Plan's out of pocket
220 maximum based on income levels:
221 (Aa) the deductible is \$750 per individual and \$2,250 per family; and
222 (Bb) the out of pocket maximum is \$3,000 per individual and \$9,000 per family;
223 (II) dental coverage is not required; and
224 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
225 apply; or
226 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
227 deductible that is either:
228 (I) the lowest deductible permitted for a federally qualified high deductible health plan;
229 or
230 (II) a deductible that is higher than the lowest deductible permitted for a federally
231 qualified high deductible health plan, but includes an employer contribution to a health savings
232 account in a dollar amount at least equal to the dollar amount difference between the lowest
233 deductible permitted for a federally qualified high deductible plan and the deductible for the
234 employer offered federally qualified high deductible plan; and
235 (B) an out of pocket maximum that does not exceed three times the amount of the
236 annual deductible; and
237 (C) under which the employer pays 75% of the premium for the employee and the
238 dependents of the employee who work or reside in the state.
239 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
240 (2) Except as provided in Subsection (3), this section applies to all contracts entered
241 into by or delegated to the department or a division or board of the department on or after July
242 1, 2009, if:
243 (a) the contract is for design or construction; and
244 (b) (i) the prime contract is in the amount of \$1,500,000 or greater; or
245 (ii) a subcontract is in the amount of \$750,000 or greater.
246 (3) This section does not apply to contracts entered into by the department or a division
247 or board of the department if:
248 (a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract or agreement is between:

(i) the department or a division or board of the department; and

(ii) (A) another agency of the state;

(B) the federal government;

(C) another state;

(D) an interstate agency;

(E) a political subdivision of this state; or

(F) a political subdivision of another state;

(c) the executive director determines that applying the requirements of this section to a particular contract interferes with the effective response to an immediate health and safety threat from the environment; or

(d) the contract is:

(i) a sole source contract; or

(ii) an emergency procurement.

(4) (a) This section does not apply to a change order as defined in Section 63G-6-102, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall demonstrate to the executive director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the contract.

(c) (i) (A) A contractor who fails to comply with Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the

280 requirements of Subsection (5)(b).

281 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
282 the duration of the contract is subject to penalties in accordance with administrative rules
283 adopted by the department under Subsection (6).

284 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
285 requirements of Subsection (5)(a).

286 (6) The department shall adopt administrative rules:

287 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

288 (b) in coordination with:

289 (i) a public transit district in accordance with Section 17B-2a-818.5;

290 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

291 (iii) the State Building Board in accordance with Section 63A-5-205;

292 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

293 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

294 (vi) the Legislature's Administrative Rules Review Committee; and

295 (c) which establish:

296 (i) the requirements and procedures a contractor must follow to demonstrate to the
297 public transit district compliance with this section which shall include:

298 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

299 (b) more than twice in any 12-month period; and

300 (B) that the actuarially equivalent determination required in Subsection (1) is met by
301 the contractor if the contractor provides the department or division with a written statement of
302 actuarial equivalency from either:

303 (I) the Utah Insurance Department [or];

304 (II) an actuary selected by the contractor or the contractor's insurer; [and] or

305 (III) an underwriter who is responsible for developing the employer group's premium
306 rates;

307 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
308 violates the provisions of this section, which may include:

309 (A) a three-month suspension of the contractor or subcontractor from entering into
310 future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

(D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract~~[-];~~ and

(iii) a website on which the department shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(c)(i).

(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs ~~[not covered by insurance:]~~ that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a) if the employer:

(A) relied in good faith on a written statement of actuarial equivalency provided by an actuary; or

(B) if the department determines that compliance with this section is not required under the provisions of Subsections (3) or (4).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design

or construction.

Section 3. Section **31A-30-209** is enacted to read:

31A-30-209. State contract requirements -- Employer default plans.

(1) This section applies to an employer who is required to offer its employees a health benefit plan as a condition of qualifying for a state contract under:

(a) Section 17B-2a-818.5;

(b) Section 19-1-206;

(c) Subsection 53A-5-205(3);

(d) Section 63C-9-403;

(e) Section 72-6-107.5; and

(f) Section 79-2-404.

(2) An employer described in Subsection (1) shall, when selecting the default plan required in Section 31A-30-204, select a default plan that is "qualified health insurance coverage" as defined in the sections listed in Subsections (1)(a) through (f).

Section 4. Section **63A-5-205** is amended to read:

63A-5-205. Contracting powers of director -- Retainage -- Health insurance coverage.

(1) As used in this section:

(a) "Capital developments" has the same meaning as provided in Section 63A-5-104.

(b) "Capital improvements" has the same meaning as provided in Section 63A-5-104.

(c) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 90 days from the date of hire.

(d) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(e) "Qualified health insurance coverage" means ~~[a health benefit plan that]~~ at the time the contract is entered into or renewed:

~~[(f) (A) provides coverage that is actuarially equivalent to the current benefit plan determined by the Children's Health Insurance Program under Section 26-40-106; and]~~

~~[(B) under which the employer pays at least 50% of the premium for the employee and]~~

373 ~~the dependents of the employee;]~~
374 ~~[(ii) (A) is a federally qualified high deductible health plan that has:]~~
375 ~~[(f) the lowest deductible permitted for a federally qualified high deductible health~~
376 ~~plan; and]~~
377 ~~[(H) an out of pocket maximum that does not exceed three times the amount of the~~
378 ~~annual deductible; and]~~
379 ~~[(B) under which the employer pays 75% of the premium for the employee and the~~
380 ~~dependents of the employee; or]~~
381 ~~[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan~~
382 ~~determined under Subsection (1)(c)(i); and]~~
383 ~~[(B) under which the employer pays at least 75% of the premium of the employee and~~
384 ~~the dependents of the employee:]~~
385 (i) a health benefit plan and employer contribution level with a combined actuarial
386 value at least actuarially equivalent to the combined actuarial value of the Benchmark Plan
387 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
388 a contribution level of 50% of the premium for the employee and the dependents of the
389 employee who reside or work in the state, in which:
390 (A) the employer pays at least 50% of the premium for the employee and the
391 dependents of the employee who reside or work in the state; and
392 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
393 (I) rather than the Benchmark Plan's deductible, and the Benchmark Plan's out of pocket
394 maximum based on income levels:
395 (Aa) the deductible is \$750 per individual and \$2,250 per family; and
396 (Bb) the out of pocket maximum is \$3,000 per individual and \$9,000 per family;
397 (II) dental coverage is not required; and
398 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
399 apply; or
400 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
401 deductible that is either:
402 (I) the lowest deductible permitted for a federally qualified high deductible health plan;
403 or

(II) a deductible that is higher than the lowest deductible permitted for a federally qualified high deductible health plan, but includes an employer contribution to a health savings account in a dollar amount at least equal to the dollar amount difference between the lowest deductible permitted for a federally qualified high deductible plan and the deductible for the employer offered federally qualified high deductible plan; and

(B) an out of pocket maximum that does not exceed three times the amount of the annual deductible; and

(C) under which the employer pays 75% of the premium for the employee and the dependents of the employee who work or reside in the state.

(f) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

(2) In accordance with Title 63G, Chapter 6, Utah Procurement Code, the director may:

(a) subject to Subsection (3), enter into contracts for any work or professional services which the division or the State Building Board may do or have done; and

(b) as a condition of any contract for architectural or engineering services, prohibit the architect or engineer from retaining a sales or agent engineer for the necessary design work.

(3) (a) Except as provided in Subsection (3)(b), this Subsection (3) applies to all contracts entered into by the division or the State Building Board on or after July 1, 2009, if:

(i) the contract is for design or construction; and

(ii) (A) the prime contract is in the amount of \$1,500,000 or greater; or

(B) a subcontract is in the amount of \$750,000 or greater.

(b) This Subsection (3) does not apply:

(i) if the application of this Subsection (3) jeopardizes the receipt of federal funds;

(ii) if the contract is a sole source contract;

(iii) if the contract is an emergency procurement; or

(iv) to a change order as defined in Section 63G-6-102, or a modification to a contract, when the contract does not meet the threshold required by Subsection (3)(a).

(c) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (3)(a) is guilty of an infraction.

(d) (i) A contractor subject to Subsection (3)(a) shall demonstrate to the director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents.

(ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor shall demonstrate to the director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents.

(e) (i) (A) A contractor who fails to meet the requirements of Subsection (3)(d)(i) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (3)(f).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (3)(d)(ii).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (3)(d)(ii) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (3)(f).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (3)(d)(i).

(f) The division shall adopt administrative rules:

(i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(ii) in coordination with:

(A) the Department of Environmental Quality in accordance with Section 19-1-206;

(B) the Department of Natural Resources in accordance with Section 79-2-404;

(C) a public transit district in accordance with Section 17B-2a-818.5;

(D) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(E) the Department of Transportation in accordance with Section 72-6-107.5; and

(F) the Legislature's Administrative Rules Review Committee; and

(iii) which establish:

(A) the requirements and procedures a contractor must follow to demonstrate to the director compliance with this Subsection (3) which shall include:

(I) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or (b) more than twice in any 12-month period; and

(II) that the actuarially equivalent determination required in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either:

466 (Aa) the Utah Insurance Department [or];
467 (Bb) an actuary selected by the contractor or the contractor's insurer; [and] or
468 (Cc) an underwriter who is responsible for developing the employer group's premium
469 rates;

470 (B) the penalties that may be imposed if a contractor or subcontractor intentionally
471 violates the provisions of this Subsection (3), which may include:

472 (I) a three-month suspension of the contractor or subcontractor from entering into
473 future contracts with the state upon the first violation;

474 (II) a six-month suspension of the contractor or subcontractor from entering into future
475 contracts with the state upon the second violation;

476 (III) an action for debarment of the contractor or subcontractor in accordance with
477 Section 63G-6-804 upon the third or subsequent violation; and

478 (IV) monetary penalties which may not exceed 50% of the amount necessary to
479 purchase qualified health insurance coverage for an employee and the dependents of an
480 employee of the contractor or subcontractor who was not offered qualified health insurance
481 coverage during the duration of the contract~~[-]; and~~

482 (C) a website on which the department shall post the benchmark for the qualified
483 health insurance coverage identified in Subsection (1)(e)(i).

484 (g) (i) In addition to the penalties imposed under Subsection (3)(f)(iii), a contractor or
485 subcontractor who intentionally violates the provisions of this section shall be liable to the
486 employee for health care costs ~~[not covered by insurance:]~~ that would have been covered by
487 qualified health insurance coverage.

488 (ii) An employer has an affirmative defense to a cause of action under Subsection (g)(i)
489 if the employer:

490 (A) relied in good faith on a written statement of actuarial equivalency provided by an
491 actuary; or

492 (B) if the department determines that compliance with this section is not required under
493 the provisions of Subsection (3)(b).

494 ~~[(ii)]~~ (iii) An employee has a private right of action only against the employee's
495 employer to enforce the provisions of this Subsection (3)(g).

496 (h) Any penalties imposed and collected under this section shall be deposited into the

497 Medicaid Restricted Account created by Section 26-18-402.

498 (i) The failure of a contractor or subcontractor to provide qualified health insurance
499 coverage as required by this section:

500 (i) may not be the basis for a protest or other action from a prospective bidder, offeror,
501 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
502 Legal and Contractual Remedies; and

503 (ii) may not be used by the procurement entity or a prospective bidder, offeror, or
504 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
505 or construction.

506 (4) The judgment of the director as to the responsibility and qualifications of a bidder
507 is conclusive, except in case of fraud or bad faith.

508 (5) The division shall make all payments to the contractor for completed work in
509 accordance with the contract and pay the interest specified in the contract on any payments that
510 are late.

511 (6) If any payment on a contract with a private contractor to do work for the division or
512 the State Building Board is retained or withheld, it shall be retained or withheld and released as
513 provided in Section 13-8-5.

514 Section 5. Section **63C-9-403** is amended to read:

515 **63C-9-403. Contracting power of executive director -- Health insurance coverage.**

516 (1) For purposes of this section:

517 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
518 34A-2-104 who:

519 (i) works at least 30 hours per calendar week; and

520 (ii) meets employer eligibility waiting requirements for health care insurance which
521 may not exceed the first of the calendar month following 90 days from the date of hire.

522 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

523 (c) "Qualified health insurance coverage" means [~~a health benefit plan that~~] at the time
524 the contract is entered into or renewed:

525 [~~(i) (A) provides coverage that is actuarially equivalent to the current benefit plan~~
526 ~~determined by the Children's Health Insurance Program under Section 26-40-106; and]~~

527 [~~(B) under which the employer pays at least 50% of the premium for the employee and~~

528 ~~the dependents of the employee;]~~
529 ~~[(ii) (A) is a federally qualified high deductible health plan that has:]~~
530 ~~[(I) the lowest deductible permitted for a federally qualified high deductible health~~
531 ~~plan; and]~~
532 ~~[(H) an out of pocket maximum that does not exceed three times the amount of the~~
533 ~~annual deductible; and]~~
534 ~~[(B) under which the employer pays 75% of the premium for the employee and the~~
535 ~~dependents of the employee; or]~~
536 ~~[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan~~
537 ~~determined under Subsection (1)(c)(i); and]~~
538 ~~[(B) under which the employer pays at least 75% of the premium of the employee and~~
539 ~~the dependents of the employee.]~~
540 (i) a health benefit plan and employer contribution level with a combined actuarial
541 value at least actuarially equivalent to the combined actuarial value of the Benchmark Plan
542 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
543 a contribution level of 50% of the premium for the employee and the dependents of the
544 employee who reside or work in the state, in which:
545 (A) the employer pays at least 50% of the premium for the employee and the
546 dependents of the employee who reside or work in the state; and
547 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
548 (I) rather than the Benchmark Plan's deductible, and the Benchmark Plan's out of pocket
549 maximum based on income levels:
550 (Aa) the deductible is \$750 per individual and \$2,250 per family; and
551 (Bb) the out of pocket maximum is \$3,000 per individual and \$9,000 per family;
552 (II) dental coverage is not required; and
553 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
554 apply; or
555 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
556 deductible that is either:
557 (I) the lowest deductible permitted for a federally qualified high deductible health plan;
558 or

559 (II) a deductible that is higher than the lowest deductible permitted for a federally
560 qualified high deductible health plan, but includes an employer contribution to a health savings
561 account in a dollar amount at least equal to the dollar amount difference between the lowest
562 deductible permitted for a federally qualified high deductible plan and the deductible for the
563 employer offered federally qualified high deductible plan; and

564 (B) an out of pocket maximum that does not exceed three times the amount of the
565 annual deductible; and

566 (C) under which the employer pays 75% of the premium for the employee and the
567 dependents of the employee who work or reside in the state.

568 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

569 (2) Except as provided in Subsection (3), this section applies to all contracts entered
570 into by the board or on behalf of the board on or after July 1, 2009, if:

571 (a) the contract is for design or construction; and

572 (b) (i) the prime contract is in the amount of \$1,500,000 or greater; or

573 (ii) a subcontract is in the amount of \$750,000 or greater.

574 (3) This section does not apply if:

575 (a) the application of this section jeopardizes the receipt of federal funds;

576 (b) the contract is a sole source contract; or

577 (c) the contract is an emergency procurement.

578 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
579 or a modification to a contract, when the contract does not meet the initial threshold required
580 by Subsection (2).

581 (b) A person who intentionally uses change orders or contract modifications to
582 circumvent the requirements of Subsection (2) is guilty of an infraction.

583 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
584 director that the contractor has and will maintain an offer of qualified health insurance
585 coverage for the contractor's employees and the employees' dependents during the duration of
586 the contract.

587 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
588 shall demonstrate to the executive director that the subcontractor has and will maintain an offer
589 of qualified health insurance coverage for the subcontractor's employees and the employees'

590 dependents during the duration of the contract.

591 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
592 the duration of the contract is subject to penalties in accordance with administrative rules
593 adopted by the division under Subsection (6).

594 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
595 requirements of Subsection (5)(b).

596 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
597 the duration of the contract is subject to penalties in accordance with administrative rules
598 adopted by the department under Subsection (6).

599 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
600 requirements of Subsection (5)(a).

601 (6) The department shall adopt administrative rules:

602 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

603 (b) in coordination with:

604 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

605 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

606 (iii) the State Building Board in accordance with Section 63A-5-205;

607 (iv) a public transit district in accordance with Section 17B-2a-818.5;

608 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

609 (vi) the Legislature's Administrative Rules Review Committee; and

610 (c) which establish:

611 (i) the requirements and procedures a contractor must follow to demonstrate to the
612 executive director compliance with this section which shall include:

613 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

614 (b) more than twice in any 12-month period; and

615 (B) that the actuarially equivalent determination required in Subsection (1) is met by
616 the contractor if the contractor provides the department or division with a written statement of
617 actuarial equivalency from either:

618 (I) the Utah Insurance Department [~~or~~];

619 (II) an actuary selected by the contractor or the contractor's insurer; [~~and~~] or

620 (III) an underwriter who is responsible for developing the employer group's premium

621 rates;

622 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
623 violates the provisions of this section, which may include:

624 (A) a three-month suspension of the contractor or subcontractor from entering into
625 future contracts with the state upon the first violation;

626 (B) a six-month suspension of the contractor or subcontractor from entering into future
627 contracts with the state upon the second violation;

628 (C) an action for debarment of the contractor or subcontractor in accordance with
629 Section 63G-6-804 upon the third or subsequent violation; and

630 (D) monetary penalties which may not exceed 50% of the amount necessary to
631 purchase qualified health insurance coverage for employees and dependents of employees of
632 the contractor or subcontractor who were not offered qualified health insurance coverage
633 during the duration of the contract[-]; and

634 (iii) a website on which the department shall post the benchmark for the qualified
635 health insurance coverage identified in Subsection (1)(c)(i).

636 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
637 subcontractor who intentionally violates the provisions of this section shall be liable to the
638 employee for health care costs [~~not covered by insurance.~~] that would have been covered by
639 qualified health insurance coverage.

640 (ii) An employer has an affirmative defense to a cause of action under Subsection
641 (7)(a) if the employer:

642 (A) relied in good faith on a written statement of actuarial equivalency provided by an
643 actuary; or

644 (B) if the department determines that compliance with this section is not required under
645 the provisions of Subsections (3) or (4).

646 (b) An employee has a private right of action only against the employee's employer to
647 enforce the provisions of this Subsection (7).

648 (8) Any penalties imposed and collected under this section shall be deposited into the
649 Medicaid Restricted Account created in Section 26-18-402.

650 (9) The failure of a contractor or subcontractor to provide qualified health insurance
651 coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Section 6. Section **72-6-107.5** is amended to read:

72-6-107.5. Construction of improvements of highway -- Contracts -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 90 days from the date of hire.

(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(c) "Qualified health insurance coverage" means [~~a health benefit plan that~~] at the time the contract is entered into or renewed:

~~[(i) (A) provides coverage that is actuarially equivalent to the current benefit plan determined by the Children's Health Insurance Program under Section 26-40-106; and]~~

~~[(B) under which the employer pays at least 50% of the premium for the employee and the dependents of the employee;]~~

~~[(ii) (A) is a federally qualified high deductible health plan that has:]~~

~~[(i) the lowest deductible permitted for a federally qualified high deductible health plan; and]~~

~~[(H) an out of pocket maximum that does not exceed three times the amount of the annual deductible; and]~~

~~[(B) under which the employer pays 75% of the premium for the employee and the dependents of the employee; or]~~

~~[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan determined under Subsection (1)(c)(i); and]~~

683 ~~[(B) under which the employer pays at least 75% of the premium of the employee and~~
684 ~~the dependents of the employee.]~~

685 (i) a health benefit plan and employer contribution level with a combined actuarial
686 value at least actuarially equivalent to the combined actuarial value of the Benchmark Plan
687 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
688 a contribution level of 50% of the premium for the employee and the dependents of the
689 employee who reside or work in the state, in which:

690 (A) the employer pays at least 50% of the premium for the employee and the
691 dependents of the employee who reside or work in the state; and

692 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

693 (I) rather than the Benchmark Plan's deductible, and the Benchmark Plan's out of pocket
694 maximum based on income levels:

695 (Aa) the deductible is \$750 per individual and \$2,250 per family; and

696 (Bb) the out of pocket maximum is \$3,000 per individual and \$9,000 per family;

697 (II) dental coverage is not required; and

698 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
699 apply; or

700 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
701 deductible that is either:

702 (I) the lowest deductible permitted for a federally qualified high deductible health plan;

703 or

704 (II) a deductible that is higher than the lowest deductible permitted for a federally
705 qualified high deductible health plan, but includes an employer contribution to a health savings
706 account in a dollar amount at least equal to the dollar amount difference between the lowest
707 deductible permitted for a federally qualified high deductible plan and the deductible for the
708 employer offered federally qualified high deductible plan; and

709 (B) an out of pocket maximum that does not exceed three times the amount of the
710 annual deductible; and

711 (C) under which the employer pays 75% of the premium for the employee and the
712 dependents of the employee who work or reside in the state.

713 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

(2) Except as provided in Subsection (3), this section applies to all contracts entered into by the department on or after July 1, 2009, for construction or design of highways if:

(a) the prime contract is in the amount of \$1,500,000 or greater; or

(b) a subcontract is in the amount of \$750,000 or greater.

(3) This section does not apply if:

(a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(4) (a) This section does not apply to a change order as defined in Section 63G-6-102, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2) shall demonstrate to the department that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall demonstrate to the department that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the contract.

(c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) the Department of Environmental Quality in accordance with Section 19-1-206;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(v) a public transit district in accordance with Section 17B-2a-818.5; and

(vi) the Legislature's Administrative Rules Review Committee; and

(c) which establish:

(i) the requirements and procedures a contractor must follow to demonstrate to the department compliance with this section which shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or (b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either:

(I) the Utah Insurance Department [or];

(II) an actuary selected by the contractor or the contractor's insurer; [and] or

(III) an underwriter who is responsible for developing the employer group's premium rates;

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and a dependent of the employee of the contractor or subcontractor who was not offered qualified health insurance coverage

776 during the duration of the contract[-]; and

777 (iii) a website on which th department shall post the benchmark for the qualified health
778 insurance coverage identified in Subsection (1)(c)(i).

779 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or
780 subcontractor who intentionally violates the provisions of this section shall be liable to the
781 employee for health care costs [~~not covered by insurance.~~] that would have been covered by
782 qualified health insurance coverage.

783 (ii) An employer has an affirmative defense to a cause of action under Subsection
784 (7)(a) if the employer:

785 (A) relied in good faith on a written statement of actuarial equivalency provided by an
786 actuary; or

787 (B) if the department determines that compliance with this section is not required under
788 the provisions of Subsections (3) or (4).

789 (b) An employee has a private right of action only against the employee's employer to
790 enforce the provisions of this Subsection (7).

791 (8) Any penalties imposed and collected under this section shall be deposited into the
792 Medicaid Restricted Account created in Section 26-18-402.

793 (9) The failure of a contractor or subcontractor to provide qualified health insurance
794 coverage as required by this section:

795 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
796 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
797 Legal and Contractual Remedies; and

798 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
799 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
800 or construction.

801 Section 7. Section **79-2-404** is amended to read:

802 **79-2-404. Contracting powers of department -- Health insurance coverage.**

803 (1) For purposes of this section:

804 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
805 34A-2-104 who:

806 (i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 90 days from the date of hire.

(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(c) "Qualified health insurance coverage" means a ~~[health benefit plan that]~~ at the time the contract is entered into or renewed:

~~[(i) (A) provides coverage that is actuarially equivalent to the current benefit plan determined by the Children's Health Insurance Program under Section 26-40-106; and]~~

~~[(B) under which the employer pays at least 50% of the premium for the employee and the dependents of the employee;]~~

~~[(ii) (A) is a federally qualified high deductible health plan that has:]~~

~~[(i) the lowest deductible permitted for a federally qualified high deductible health plan; and]~~

~~[(H) an out of pocket maximum that does not exceed three times the amount of the annual deductible; and]~~

~~[(B) under which the employer pays 75% of the premium for the employee and the dependents of the employee; or]~~

~~[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan determined under Subsection (1)(c)(i); and]~~

~~[(B) under which the employer pays at least 75% of the premium of the employee and the dependents of the employee.]~~

(i) a health benefit plan and employer contribution level with a combined actuarial value at least actuarially equivalent to the combined actuarial value of the Benchmark Plan determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and a contribution level of 50% of the premium for the employee and the dependents of the employee who reside or work in the state, in which:

(A) the employer pays at least 50% of the premium for the employee and the dependents of the employee who reside or work in the state; and

(B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

(I) rather than the Benchmark Plan's deductible, and the Benchmark Plan's out of pocket maximum based on income levels:

(Aa) the deductible is \$750 per individual and \$2,250 per family; and

838 (Bb) the out of pocket maximum is \$3,000 per individual and \$9,000 per family;
839 (II) dental coverage is not required; and
840 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
841 apply; or
842 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
843 deductible that is either:
844 (I) the lowest deductible permitted for a federally qualified high deductible health plan;
845 or
846 (II) a deductible that is higher than the lowest deductible permitted for a federally
847 qualified high deductible health plan, but includes an employer contribution to a health savings
848 account in a dollar amount at least equal to the dollar amount difference between the lowest
849 deductible permitted for a federally qualified high deductible plan and the deductible for the
850 employer offered federally qualified high deductible plan; and
851 (B) an out of pocket maximum that does not exceed three times the amount of the
852 annual deductible; and
853 (C) under which the employer pays 75% of the premium for the employee and the
854 dependents of the employee who work or reside in the state.
855 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
856 (2) Except as provided in Subsection (3), this section applies to all contracts entered
857 into by, or delegated to, the department or a division, board, or council of the department on or
858 after July 1, 2009, if:
859 (a) the contract is for design or construction; and
860 (b) (i) the prime contract is in the amount of \$1,500,000 or greater; or
861 (ii) a subcontract is in the amount of \$750,000 or greater.
862 (3) This section does not apply to contracts entered into by the department or a
863 division, board, or council of the department if:
864 (a) the application of this section jeopardizes the receipt of federal funds;
865 (b) the contract or agreement is between:
866 (i) the department or a division, board, or council of the department; and
867 (ii) (A) another agency of the state;
868 (B) the federal government;

- (C) another state;
- (D) an interstate agency;
- (E) a political subdivision of this state; or
- (F) a political subdivision of another state; or

(c) the contract or agreement is:

- (i) for the purpose of disbursing grants or loans authorized by statute;
- (ii) a sole source contract; or
- (iii) an emergency procurement.

(4) (a) This section does not apply to a change order as defined in Section 63G-6-102, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the contractor shall demonstrate to the department that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the contract.

(c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) the Department of Environmental Quality in accordance with Section 19-1-206;

(ii) a public transit district in accordance with Section 17B-2a-818.5;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

(vi) the Legislature's Administrative Rules Review Committee; and

(c) which establish:

(i) the requirements and procedures a contractor must follow to demonstrate compliance with this section to the department which shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or (b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either:

(I) the Utah Insurance Department [~~or~~];

(II) an actuary selected by the contractor or the contractor's insurer; [~~and~~] or

(III) an underwriter who is responsible for developing the employer group's premium rates;

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; [~~and~~]

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and a dependent of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage

931 during the duration of the contract[-]; and

932 (iii) a website on which the department shall post the benchmark for the qualified
933 health insurance coverage identified in Subsection (1)(c)(i).

934 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or
935 subcontractor who intentionally violates the provisions of this section shall be liable to the
936 employee for health care costs [~~not covered by insurance.~~] that would have been covered by
937 qualified health insurance coverage.

938 (ii) An employer has an affirmative defense to a cause of action under Subsection
939 (7)(a) if the employer:

940 (A) relied in good faith on a written statement of actuarial equivalency provided by an
941 actuary; or

942 (B) if the department determines that compliance with this section is not required under
943 the provisions of Subsections (3) or (4).

944 (b) An employee has a private right of action only against the employee's employer to
945 enforce the provisions of this Subsection (7).

946 (8) Any penalties imposed and collected under this section shall be deposited into the
947 Medicaid Restricted Account created in Section 26-18-402.

948 (9) The failure of a contractor or subcontractor to provide qualified health insurance
949 coverage as required by this section:

950 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
951 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
952 Legal and Contractual Remedies; and

953 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
954 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
955 or construction.

Legislative Review Note
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Office of Legislative Research and General Counsel